BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

COMPLETED
ORIGINAL

More Guidance And Supervision Needed Over Federal Grand Jury Proceedings

Criminal justice officials do not fully know what grand jury materials should be kept secret nor have they established adequate security procedures and practices. Identities of witnesses and persons under investigation as well as the nature of grand jury investigations are often unnecessarily disclosed in the news media, public court files, and public court proceedings.

Two Judicial Conference Committees and the chief judges in six Federal court districts visited generally agreed with GAO's report. The Department of Justice said that the report contributes to the improvement of grand jury procedures but at the same time distorts the problems with keeping grand jury proceedings secret.

GAO disagreees with the Department's criticisms and believes action must be taken to prevent disclosures about ongoing grand jury proceedings. GAO has made numerous recommendations which will help to correct the problems noted.

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COMPTROLLER GENERAL'S
REPORT TO CONGRESS

MORE GUIDANCE AND SUPERVISION NEEDED OVER FEDERAL GRAND JURY PROCEEDINGS

D I G E S T

The grand jury is one of the Government's more effective tools to combat organized crime, drug trafficking, and white-collar crime. The effective prosecution of these crimes depends largely on securing grand jury proceedings to encourage witnesses to testify and produce evidence and keep persons under investigation from hampering investigations. However, hundreds of times information about grand jury proceedings has been disclosed in the news media, public court files, and public court proceedings with the result that either

--witnesses had their identities revealed, before any indictments were returned, including some who were murdered, intimidated, or disappeared,

--reputations of persons never indicted were damaged,

--persons under investigations were identified before indictment, or

--grand jury investigations were dropped or delayed.

These disclosures were not necessarily made illegally or surreptitiously and, in fact, are often allowable or even required under existing laws and procedures. (See ch. 2.)

However, because such disclosures can have serious consequences to witnesses and effective law enforcement, GAO believes the Federal judiciary, as the

supervisor of grand jury proceedings, needs to provide more definitive guidance on what grand jury information should be protected and how it should be protected.

LACK OF CLARITY ABOUT WHAT SHOULD BE SECRET AND HOW TO PROTECT IT CAUSES DISCLOSURES

Disclosures of grand jury proceedings will continue until district courts receive definitive guidance and direction on

--what specific information and documents must be kept secret, and

--what custodians of secret material and information must do to keep it secret.

What is grand jury material?

Rule 6(e) of the Federal Rules of Criminal Procedure prohibits disclosing "matters occurring before the grand jury" and identifies who may properly hear, see, or receive grand jury information. Transcripts of grand jury proceedings and the deliberations and vote of the grand jury clearly qualify as "matters occurring before the grand jury," and cannot be disclosed. Beyond this type of information, however, no consensus exists among the judiciary, Government attorneys, or law enforcement agents on precisely what grand jury "matters" are covered by rule 6(e). Opinions differ on whether the following should be kept secret:

--Court proceedings ancillary to grand jury proceedings that deal with and discuss ongoing grand jury activities. (See p. 8.)

--Grand jury subpoenas, which contain the names of witnesses. (See p. 13.)

--Evidence developed independently of, but later introduced to, the grand jury. (See p. 14.)

--Copies of documentary materials presented to the grand jury. (See p. 14.)

--Internal Government memorandums and other documents that tend to reveal what transpires before the grand jury. (See p. 14.)

--Grand juror identities while the grand jury is sitting. (See p. 15.)

How should grand jury security be protected?

The Federal judiciary does not have a consistent program to secure grand jury materials and information to

--limit access to, store, and dispose of grand jury information (see pp. 18, 22, and 26);

--identify grand jurors who have connections with persons under investigation (see p. 27);

--insure that grand jury rooms are secure so as to protect the proceedings and identities of grand jurors and witnesses from disclosure (see p. 28); and

--audit existing security procedures and practices (see p. 30).

Because such procedures are not in place, disclosures have come from Federal district courts, grand jurors, grand jury court

reporters, U.S. attorney offices, organized crime strike force offices, U.S. marshal offices, and to a lesser extent, law enforcement agencies.

RECOMMENDATIONS

GAO recommends that the Judicial Conference of the United States:

--Develop a proposed amendment to rule 6(e), Federal Rules of Criminal Procedure, defining what must be kept secret during the duration of grand jury proceedings.

--Establish guidelines setting forth the minimum security requirements needed to protect grand jury materials.

--Require each custodian of grand jury materials, including court supervised court reporters, to establish procedures consistent with the security guidelines and document them in a security plan to be approved by the appropriate district court.

--Review Jury System Improvement Act plans so that the courts and the Department are in a position to react appropriately whenever there are situations calling for maintaining the confidentiality of grand juror names.

--Provide for periodic internal audits of all custodians of grand jury materials to determine whether they are complying with approved security plans and to identify needed improvements in existing security procedures and practices.

--Evaluate the physical security around grand jury rooms and develop a plan to upgrade and modify deficient facilities to assure that grand jury proceedings will not be compromised.

GAO also recommends that the Attorney General improve the security practices of U.S. attorneys, organized crime strike forces, U.S. marshals and court reporter personnel by developing and issuing interim security guidelines to be used until the Federal judiciary establishes security requirements. GAO further recommends that grand jurors be routinely screened for possible conflicts of interest with cases to be presented to the grand jury. (See pp. 33 and 34.)

AGENCY COMMENTS AND OUR EVALUATION

The chief judges in six of the seven districts visited were in general agreement with the overall message of the report. The seventh chief judge chose not to comment on the report. The Chairman of the Jury Operations Committee, speaking for the judiciary, expressed concern about the grand jury security issues raised in this report. He said that the two Judicial Conference committees having jurisdiction over grand jury operations would consider during their July 1980 meetings the report's findings, conclusions, and recommendations. Subsequently, GAO was told the committees believed the issues raised deserved further study and that special subcommittees have been established to perform the study. (See pp. 35 to 38.)

The Department of Justice said that the report contains some constructive criticisms and, on the whole, contributes to the improvement of Federal grand jury procedures. It further stated that it wholeheartedly endorsed the thrust of the report and that the incidence of genuine breaches of grand jury secrecy had increased in recent years. The Department said that improved security measures could reduce inadvertent breaches of secrecy. The Department then cited a number of actions it has

underway or under study in response to GAO's report. At the same time, the Department said that the report distorts the problems attending grand jury secrecy; exaggerates the incidence of secrecy breaches; narrowly focuses on the principles underlying grand jury secrecy; and advocates sweeping changes to judicial procedures. (See pp. 38 to 49.)

GAO strongly disagrees with the Department's criticisms and believes that its comments contain misconceptions about the report and confuses the basic message. GAO believes its detailed analysis has proven that disclosures have resulted in the identification of witnesses, targets, and the nature of investigations. GAO further believes that since it only reviewed 7 of the 95 Federal district courts, the disclosures identified are only the "tip of the iceberg." As a result of the facts presented in this report on disclosures, GAO believes that if secrecy is to remain an important part of the grand jury process, action must be taken to implement rules and methods designed to prevent disclosures about ongoing grand jury proceedings. (See pp. 43 to 49.)

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ABBREVIATIONS

DEA	Drug Enforcement Administration
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
IRS	Internal Revenue Service